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Report of the Working Group

Chapter 15
Enforcement

Section I
Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104

Rule 10.1
Communications between the Court and States

Unless the context otherwise requires, rules 9.1 to 9.5 shall apply, as appropriate, to communications between the Court and a State on matters relating to enforcement of sentences.

Rule 10.2
Organ responsible under Part 10

Unless provided otherwise in the Rules, the functions of the Court under Part 10 shall be exercised by the Presidency.

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Rule 10.3
List of States of enforcement

1. A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.

2. The Presidency shall not include a State on the list provided for in article 103, paragraph (1), if it does not agree with the conditions that such a State attaches to its acceptance. The Presidency may request any additional information from that State prior to taking a decision.

3. A State that has attached conditions of acceptance may at any time withdraw such conditions. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.

4. A State may at any time inform the Registrar of its withdrawal from the list. Such withdrawal shall not affect the enforcement of the sentences in respect of persons that the State has already accepted.

5. The Court may enter bilateral arrangements with States with a view to establishing a framework for the acceptance of prisoners sentenced by the Court. Such arrangements shall be consistent with the Statute.

Rule 10.4
Principles of equitable distribution

Principles of equitable distribution for purposes of article 103, paragraph 3, shall include:

(a) The principle of equitable geographical distribution;

(b) The need to afford each State on the list an opportunity to receive sentenced persons;

(c) The number of sentenced persons already received by that State and other States of enforcement;

(d) Any other relevant factors.

Rule 10.5
Timing of delivery of the sentenced person to the State of enforcement

The delivery of a sentenced person from the Court to the designated State of enforcement shall not take place unless the decision on the conviction and the decision on the sentence have become final.

Rule 10.6
Views of the sentenced person

1. The Presidency shall give notice in writing to the sentenced person that it is addressing the designation of a State of enforcement. The sentenced person shall,

within such time limit as the Presidency shall prescribe, submit in writing his or her views on the question to the Presidency.

2. The Presidency may allow the sentenced person to make oral presentations.

3. The Presidency shall allow the sentenced person:

(a) To be assisted, as appropriate, by a competent interpreter and to benefit from any translation necessary for the presentation of his or her views;

(b) To be granted adequate time and facilities necessary to prepare for the presentation of his or her views.

Rule 10.7
Information relating to designation

When the Presidency notifies the designated State of its decision, it shall also transmit the following information and documents:

(a) The name, nationality, date and place of birth of the sentenced person;

(b) A copy of the final judgement of conviction and of the sentence imposed;

(c) The length and commencement date of the sentence and the time remaining to be served;

(d) After having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

Rule 10.8
Rejection of designation in a particular case

Where a State in a particular case rejects the designation by the Presidency, the Presidency may designate another State.

Rule 10.9
Delivery of the sentenced person to the State of enforcement

1. The Registrar shall inform the Prosecutor and the sentenced person of the State designated to enforce the sentence.

2. The sentenced person shall be delivered to the State of enforcement as soon as possible after the designated State of enforcement accepts.

3. The Registrar shall ensure the proper conduct of the delivery of the person in consultation with the authorities of the State of enforcement and the host State.

Rule 10.10
Transit

1. No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State. If an unscheduled landing occurs on the territory of the transit State, that State shall, to the extent possible under the procedure of national law, detain the sentenced person in custody until a request for transit as provided in sub-rule 2 or a request under article 89, paragraph 1, or article 92 is received.

2. To the extent possible under the procedure of national law, a State Party shall authorize the transit of a sentenced person through its territory and the provisions of article 89, paragraph 3 (b) and (c), and articles 105 and 108 and any rules relating thereto shall, as appropriate, apply. A copy of the final judgement of conviction and of the sentence imposed shall be attached to such request for transit.

Rule 10.11
Costs

1. The ordinary costs for the enforcement of the sentence in the territory of the State of enforcement shall be borne by that State.

2. Other costs, including those for the transport of the sentenced person and those referred to in article 100, paragraph 1 (c), (d) and (e), shall be borne by the Court.

Rule 10.12
Change in designation of State of enforcement

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may at any time act in accordance with article 104, paragraph 1.

2. The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought.

Rule 10.13
Procedure for change in the designation of a State of enforcement

1. Before deciding to change the designation of a State of enforcement, the Presidency may:

(a) Request views from the State of enforcement;

(b) Consider written or oral presentations of the sentenced person and the Prosecutor;

(c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;

(d) Obtain any other relevant information from any reliable sources.

2. The provisions of rule 10.6, sub-rule 3, shall apply, as appropriate.

3. If the Presidency refuses to change the designation of the State of enforcement, it shall, as soon as possible, inform the sentenced person, the Prosecutor and the Registrar of its decision and of the reasons therefor. It shall also inform the State of enforcement.

Section II
Enforcement, supervision and transfer under articles 105, 106 and 107

Rule 10.15
Transfer for the purpose of revision

1. For the conduct of the hearing provided for in rule 8.12, the relevant Chamber shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

2. The determination of the Court shall be notified without delay to the State of enforcement.

3. The provisions of rule 10.9, sub-rule 3, shall be applicable.

Rule 10.16
Supervision of enforcement of sentences and conditions of imprisonment

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:

(a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;

(b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

(d) May, where appropriate, give the State of enforcement an opportunity to comment on the views expressed by the sentenced person under sub-rule 1 (c).

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Rule 10.17
Information on location of the person for enforcement of fines, forfeitures or reparation measures

For the purpose of enforcement of fines and forfeiture measures and of reparation measures ordered by the Court, the Presidency may, at any time or at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning the intention of that State to authorize the person to remain in its territory or the location where it intends to transfer the person.

Rule 10.17 *bis*
Procedure for article 107, paragraph 3

With respect to article 107, paragraph 3, the procedure set out in rules 10.18 and 10.20 shall apply, as appropriate.

Section III
Limitation on the prosecution or punishment of other offences under article 108

Rule 10.18
Request to prosecute or enforce a sentence for prior conduct

1. For the application of article 108, when the State of enforcement wishes to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:

(a) A statement of the facts of the case and their legal characterization;

(b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;

(c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;

(d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

2. In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

3. The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

4. If the person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, the Presidency shall consult with the

State that surrendered the person and take into account any views expressed by that State.

5. Any information or documents transmitted to the Presidency under sub-rules 1 to 4 shall be transmitted to the Prosecutor, who may comment.

6. The Presidency may decide to conduct a hearing.

Rule 10.20
Decision on request to prosecute or enforce a sentence

1. The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.

2. If the request submitted under sub-rules 1 or 2 concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court, subject to the provisions of article 110.

3. The Presidency may authorize the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to the State responsible for enforcement of the sentence pronounced by the Court, after the prosecution.

Rule 10.22
Information on enforcement

The Presidency shall request the State of enforcement to inform it of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

Section IV
Enforcement of fines, forfeiture measures and reparation orders

Rule 10.23
Cooperation and measures for enforcement of fines, forfeiture or reparation orders

For the enforcement of fines, forfeiture or reparation orders, the Presidency shall, as appropriate, seek cooperation and measures for enforcement in accordance with Part 9, as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection. The Presidency shall, as appropriate, inform the State of any third-party claims or of the fact that no claim was presented by a person who received notification of any proceedings conducted pursuant to article 75.

Rule 10.23 *bis*
Orders for forfeiture and reparations

1. In order to enable States to give effect to an order for forfeiture, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) The proceeds, property and assets that have been ordered by the Court to be forfeited; and

(c) The value of the proceeds, property and assets to be forfeited in case forfeiture of the proceeds, property and assets as specified in sub-rule (b) is not possible.

2. In the request for cooperation and measures for enforcement, the Court shall also provide available information as to the location of the proceeds, property and assets that are covered by the order for forfeiture.

3. In order to enable States to give effect to an order for reparations, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) In respect of reparations of a financial nature, the identity of the victims to whom individual reparations have been granted, and, where the award for reparations shall be deposited with the Trust Fund, the particulars of the Trust Fund for the deposit of the award; and

(c) The scope and nature of the reparations ordered by the Court, including, where applicable, the property and assets for which restitution has been ordered.

4. Where the Court awards reparations on an individual basis, a copy of the reparation order shall be transmitted to the victim concerned.

Rule 10.24
Non-modification of orders for reparation

The Presidency shall, when transmitting copies of orders for reparations to States Parties under rule 10.23, inform them that, in giving effect to an order for reparations, the national authorities shall not modify the reparations specified by the Court, the scope or the extent of any damage, loss or injury determined by the Court or the principles stated in the order, and shall facilitate the enforcement of such order.

Rule 10.25
Non-modification of judgements in which fines were imposed

When transmitting copies of judgements in which fines were imposed to States Parties for the purpose of enforcement in accordance with article 109 and rule 10.23, the Presidency shall inform them that in enforcing the fines imposed, national authorities shall not modify them.

Rule 10.26
Decision on disposition or allocation of property or assets

1. The Presidency shall, after having consulted, as appropriate, with the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any relevant third party, or representatives of the Trust Fund provided for in article 79, decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court.

2. In all cases, when the Presidency decides on the disposition or allocation of property or assets belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.

Rule 10.27
Assistance for service or any other measure

The Presidency shall assist the State in the enforcement of fines, forfeiture or reparation orders, as requested, with the service of any relevant notification on the sentenced person or any other relevant persons, or the carrying out of any other measures necessary for the enforcement of the order under the procedure of the national law of the enforcement State.

Section V
Review concerning reduction of sentence under article 110

Rule 10.31
Criteria for review concerning reduction of sentence

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) Whether the early release of the sentenced person would give rise to significant social instability;

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

Rule 10.29
Procedure for review concerning reduction of sentence

1. For the application of article 110, paragraph 3, three judges of the Appeals Chamber appointed by that Chamber shall conduct a hearing, unless they decide otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. Those three judges shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a video-conference or in the State of enforcement by a judge delegated by the Appeals Chamber.

2. The same three judges shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible.

3. For the application of article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.

4. For any review under article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The three judges may also decide to hold a hearing.

5. The decision and the reasons for it shall be communicated to all those who participated in the review proceedings as soon as possible.

Section VI
Escape

Rule 10.32
Measures under article 111 in the event of escape

1. If the sentenced person has escaped, the State of enforcement shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record. The Presidency shall then proceed in accordance with Part 9.

2. However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide

all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 10.10. The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

3. If the sentenced person is surrendered to the Court pursuant to Part 9, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 10.6 to 10.9, designate another State, including the State to the territory of which the sentenced person has fled.

4. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where sub-rule 3 is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.